

Committee Name:

Senate Committee – Judiciary, Corrections and Privacy (SC–JCP)

Appointments

03hr_SC–JCP_Appt_pt00

Committee Hearings

03hr_SC–JCP_CH_pt00

Committee Reports

03hr_SC–JCP_CR_pt00

Clearinghouse Rules

03hr_SC–JCP_CRule_03–

Executive Sessions

03hr_SC–JCP_ES_pt00

Hearing Records

03hr_ab0000

03hr_sb0078

Misc.

03hr_SC–JCP_Misc_pt00

Record of Committee Proceedings

03hr_SC–JCP_RCP_pt00

WISCONSIN LABORERS' DISTRICT COUNCIL

AFFILIATED WITH A.F.L.-C.I.O. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

MICHAEL R. RYAN
President / Business Manager

KEVIN D. LEE
Vice-President

THOMAS E. FISHER
Secretary-Treas. / Rec. Secretary



Remarks of Mike Ryan to Special Committee on Review of the Open Records Law November 18, 2002

Good Morning.

My name is Mike Ryan, and I am the President and Business Manager of the Wisconsin Laborers' District Council in Madison. Before I begin, I want to thank the committee co-chairs, Representative Gundrum and Senator Erpenbach, and members of this committee for inviting me today. The Wisconsin Laborers' District Council is comprised of thirteen affiliated Local Unions representing nearly 9,500 active and retired construction craft laborers across the state. We have followed the work of this committee for many months and welcome this opportunity to briefly address the implications to us of including language relating to "independent contractors" in any legislation you may propose.

First, let me state that we have no objections to the sorts of employee protections stated in the bill draft. As a labor representative I deeply appreciate the rights of workers to have a say in who has access to their personnel records and the need to develop a process by which the privacy rights of workers are fully protected.

At the same time I believe this committee must be very clear in its intentions when extending that protection to employees of independent contractors so as not to blur the distinction between personnel records – the records being addressed by the committee's work – and the contractor records that must be maintained for compliance purposes under other sections of the statutes. I am specifically concerned about those records that contractors maintain for work performed under state prevailing wage law.

While I am not going to even begin to explain all the intricacies of state prevailing wage law, I think it is necessary that the committee have some understanding of prevailing wage law and how we utilize open records to gauge compliance of that law if it is going to deal with employees of "independent contractors" in this proposal.

Each year in Wisconsin, hundreds of millions of dollars of public construction work is awarded to private sector contractors under rules established by the state prevailing wage law and enforced by the state Department of Workforce Development. These rules include the establishment of wage rates based on work classification and the type of work performed.

Generally speaking, the wage rates are based on private sector work performed in that area and on similar projects. Because public construction is awarded based on lowest responsible bidder criteria, prevailing wage essentially prevents contractors from undercutting area wage standards in order to win work. In other words, prevailing wage allows all contractors to compete on a level playing field that is based on wage standards in that area. Unfortunately, unscrupulous contractors have ways of circumventing the law – cheating fair contractors out of work and workers out of wages and benefits.

One of the responsibilities of the Department of Workforce Development's Equal Rights Division is the administration and enforcement of state prevailing wage law. To assist in that effort the Division through the years has encouraged individuals and third parties to use the state open records law to obtain payroll information on alleged violators before filing a claim and initiating a formal investigation through the Department.

Access to payroll information is the only direct means for the public to determine contractor compliance of the prevailing wage law.

Since 1995, Wisconsin Laborers and our signatory employers have been partnering to deal with unscrupulous contractors in the industry. Together we formed the Wisconsin Alliance for Fair Contracting which, as a part of its duties, gathers information necessary to assist the Department's Equal Rights Division in conducting actual claims investigations.

The Alliance exists because there is a demand for its services. Since January of 1995, the Alliance has filed hundreds of complaints on behalf of victimized workers. These filings have resulted in the payment of hundreds of thousands of dollars in back pay and benefits to individual workers. These filings also represent individual workers who, in all likelihood, would not have sought help under the law, if it were not for the work of the organization.

The Alliance relies on Wisconsin's open-records law to access payroll information in an effort to gather the evidence necessary to demonstrate a need to investigate a contractor for violating the state prevailing wage law. This information generally consists of the worker classification, hours worked on the project, and wage and benefit payments.

We are not concerned that the ability of the Alliance to perform its duties will be compromised by bill language preventing us from obtaining personally identifiable information. We simply do not need that information to build a case against a contractor who may be cheating.

We are concerned that the draft language does not adequately distinguish between information contained in an individual record and that information that would be maintained in contractor records for compliance purposes under state prevailing wage law.

It seems possible under the present bill draft for a contractor, depending on how payroll information is maintained within the company, to challenge the release of even non-personally identifiable information without employee consent.

Given the critical and successful roll public access to payroll information currently plays in enforcing state prevailing wage law, and given the purpose of this proposed legislation is to protect individual workers and not extend privacy privileges to contractors, we recommend that this committee simply include language clarifying that the protections do not include information pertaining to work classification, hours of work, wages and benefit payments received for work performed on projects covered by state prevailing wage law.

Again, I want to thank the Committee for inviting me today. And I would be happy to answer any questions.

WISCONSIN LABORERS' DISTRICT COUNCIL

AFFILIATED WITH A.F.L.-C.I.O. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

MICHAEL R. RYAN
President / Business Manager

KEVIN D. LEE
Vice-President

THOMAS E. FISHER
Secretary-Treas. / Rec. Secretary



Date: April 21, 2003
To: Senate Judiciary Committee
From: Mike Ryan, Business Manager
Re: SB 78, relating to access to public records

The Wisconsin Laborers' District Council supports SB 78, relating to access to public records.

Last November I had the opportunity to testify before the Legislative Council Committee charged with drafting this proposal. At that time I had indicated our general support for a process and standard by which the privacy rights of workers are more fully protected under the state's open records law. I also shared with the committee our concerns that the committee be very clear in its intentions when extending that protection to employees of independent contractors so as not to blur the distinction between personnel records – the records being addressed by the committee's work – and the contractor records that must be maintained for compliance purposes under other sections of the statutes.

Specifically, I was concerned that those records maintained by a contractor performing work under state prevailing wage law remain accessible to the public through open records.

To satisfy our concerns the committee agreed to bill language that clearly stated that "personally identifiable information" does not include information pertaining to work classification, hours of work, wages and benefit payments received for work performed on projects covered by state prevailing wage law. We were pleased that invited construction industry representatives also indicated support for these exclusions.

With this memo I have enclosed a copy of my November 18, 2002 remarks to the Special Committee on Review of the Open Records Law for your review. Thank you for this opportunity to register our support of SB 78.

4:00 PM 4/21/03

- 1) TDS Telecom, Microd USA
compete w/ SBC Amitech
1996 Feds allowed competition
Not Fully Regulated by PSC

SB 78 takes away ability of, say, Doc to renew ~~new~~
~~to~~

Removes Judicial Review of PSC decision

⇒ They never were before Study Committee

Amendment - will testify explain and

- 2) w/ Prof Police Assn:
City of Madison will RE officers' names

cell: 414-315-3962 Mark Gundrum



STATE SENATOR DAVE ZIEN

CHAIRPERSON
COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY
VICE CHAIRPERSON
COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM
MEMBER
COMMITTEE ON SENATE ORGANIZATION
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS
SENTENCING COMMISSION
COUNCIL ON TOURISM
JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

MEMORANDUM

TO: Senator Scott Fitzgerald, Member, Senate Committee on Judiciary, Corrections & Privacy
FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy
DT: April 22, 2003
RE: Paper Ballot for April 22, 2003 Executive Session

Please consider the following bill and vote on the motion below. **Return this ballot to Senator Dave Zien no later than 3:00pm today.** Committee members' ballots not received by the deadline will be marked as not voting.

Senate Bill 78

Relating to: access to public records.
By Joint Legislative Council.

Please consider the following motion:

- Passage of Senate Bill 78, moved by Senator Zien:

Aye X No _____

Signature Scott Fitzgerald
Senator Scott Fitzgerald



OFFICE: P.O. BOX 7882 • STATE CAPITOL • MADISON, WI 53707-7882
PHONE (608) 266 7511 • FAX (608) 267 6794 E-MAIL: SEN.ZIEN@LEGIS.STATE.WI.US • Website: WWW.LEGIS.STATE.WI.US
SENATE DISTRICT: 505 S. DEWEY STREET, SUITE 214 • EAU CLAIRE, WI 54702 • PHONE: (715) 834 7723

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STATE SENATOR DAVE ZIEN

CHAIRPERSON

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

VICE CHAIRPERSON

COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM

MEMBER

COMMITTEE ON SENATE ORGANIZATION

COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

MEMORANDUM

TO: Senator Gary George, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: April 22, 2003

RE: Paper Ballot for April 22, 2003 Executive Session

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Senate Bill 78

Relating to: access to public records.

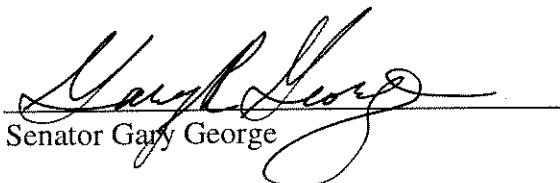
By Joint Legislative Council.

Please consider the following motion:

- Passage of Senate Bill 78, moved by Senator Zien:

Aye X No _____

Signature


Senator Gary George

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STATE SENATOR DAVE ZIEN

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COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

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COUNCIL ON TOURISM

JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

MEMORANDUM

TO: Senator Tim Carpenter, Member, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: April 22, 2003

RE: Phone Polling for April 22, 2003 Executive Session

Please consider the following bill and vote on the motion below.

Senate Bill 78

Relating to: access to public records.

By Joint Legislative Council.

Please consider the following motion (via phone by Committee Clerk John Hogan):

- Passage of Senate Bill 78, moved by Senator Zien:

Aye X No





STATE SENATOR DAVE ZIEN

CHAIRPERSON

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

VICE CHAIRPERSON

COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM

MEMBER

COMMITTEE ON SENATE ORGANIZATION

COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

MEMORANDUM

TO: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy

DT: April 22, 2003

RE: Paper Ballot for April 22, 2003 Executive Session

Please consider the following bill and vote on the motion below. **Return this ballot to Senator Dave Zien no later than 3:00pm today.** Committee members' ballots not received by the deadline will be marked as not voting.

Senate Bill 78

Relating to: access to public records.

By Joint Legislative Council.

Please consider the following motion:

- Passage of Senate Bill 78, moved by Senator Zien:

Aye ☒ No ☐

Signature _____

Senator Dave Zien

WISCONSIN



1848

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DON'T TREAD ON ME



STATE SENATOR DAVE ZIEN

CHAIRPERSON
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MEMBER
COMMITTEE ON SENATE ORGANIZATION
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS
SENTENCING COMMISSION
COUNCIL ON TOURISM
JUDICIAL COUNCIL

ASSISTANT MAJORITY LEADER

MEMORANDUM

TO: Senator Cathy Stepp, Member, Senate Committee on Judiciary, Corrections & Privacy
FR: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy
DT: April 22, 2003
RE: Paper Ballot for April 22, 2003 Executive Session

Please consider the following bill and vote on the motion below. **Return this ballot to Senator Dave Zien no later than 3:00pm today.** Committee members' ballots not received by the deadline will be marked as not voting.

Senate Bill 78

Relating to: access to public records.
By Joint Legislative Council.

Please consider the following motion:

- Passage of Senate Bill 78, moved by Senator Zien:

Aye ✓ No

Signature

Senator Cathy Stepp



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22 EAST MIFFLIN STREET, SUITE 900
MADISON, WI 53703
TOLL FREE: 1.866.404.2700
PHONE: 608.663.7188
FAX: 608.663.7189

MEMORANDUM

TO: Honorable Members of the Senate Committee on Judiciary,
Corrections and Privacy

FROM: Jennifer Sunstrom, Legislative Associate JS

DATE: April 22, 2003

RE: Senate Bill 78

The Wisconsin Counties Association (WCA) appreciates the opportunity to comment on current issues related to Wisconsin's Open Records Law as well as those changes that have been proposed in Senate Bill 78.

WCA believes that current efforts to clarify the requirements of the open records law are a step in the right direction. Specifically, limiting the number of public employee records that are open to public access and those that require notice and judicial review will create a more manageable and understandable system for custodians of public records. In addition, WCA supports the preemptive clarification that the *Woznicki* decision cannot extend entitlement of notice or judicial review of a decision of an authority, regardless of whether the record subject is a public employee.

However, WCA has serious concerns regarding the definition of "local governmental office" which is expanded under the bill to include any appointive office or position of a local government unit which an individual serves as the head of a department, agency, or division of the local governmental unit. County department heads are not public offices, but rather public employees which are directed to carry out policy decisions of elected officials. Removing their protection of privacy under the open records law either as current employees or as candidates for employment will negatively affect the ability of local governments to attract and retain highly qualified individuals to serve in these positions.

In addition, WCA respectfully opposes the continued ability of a record subject to name the authority as a defendant. Once an authority fulfills the obligation of applying the balancing test and determining whether the record subject is entitled to notice and judicial review, there is little potential for the authority to have substantive impact on the outcome of future litigation. Therefore, WCA respectfully requests legislative authority for a county to commence a civil action and relinquish the requested record to the circuit court, in camera, to allow the interested parties an opportunity to petition the court relating to the record without involving the county further in the legal process.

Page 2
WCA Memorandum
April 22, 2003

Although legislative clarification to the scope of the *Woznicki* decision is a tremendous improvement to the open records law, WCA respectfully requests that the legislature not limit the scope of its review to this one aspect of the Open Records Law. Specifically, WCA believes that there is growing need for statutory review and guidance of issues related to personal privacy, public security, market rate fees, internet access and local government liability given the changing nature of public information and open access in today's technological age.

Thank you for considering our comments. If you have any questions, please feel free to call the WCA office.

Amend SB 78 as follows:

Insert after p. 5, line 22 the following:

4. A record filed at the Public Service Commission for which a company has requested confidential treatment.

~~Cullen~~
~~Weston~~
Pines
& Bach

A Limited Liability
Partnership

Curt F. Pawlisch
Attorney at Law

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Joseph A. Strohl _____
_____ *Government Relations*

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Cell: (414) 429-2589
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ASSOCIATED BUILDERS & CONTRACTORS OF WISCONSIN, INC.

5330 Wall Street ★ Madison, WI 53718 ★ 608-244-5883 ★ Fax 608-244-2401 ★ www.abcw.org

TO: Senate Committee on the Judiciary, Corrections and Privacy
FROM: John R. Mielke, Director of Government Relations
RE: Senate Bill 78
DATE: 4-22-03

Mr. Chairman, members of the committee, I thank you for the opportunity to provide my comments regarding this important piece of legislation.

At least one of the purposes of SB 78 is to clarify the notice requirements provided by *Woznicki v. Erickson* and *Milwaukee Teachers Education Assn. v. Milwaukee Bd. of School Directors*. Those cases recognized the important privacy rights of Wisconsin citizens to their personal information that may be contained in public records.

Associated Builders & Contractors of Wisconsin represents more than 850 contractors in Wisconsin. Nearly 400 of our members work on projects covered by the state's prevailing wage law. All of our 850 contractors are required to provide some kind of information to governmental entities regardless of if they work on prevailing wage projects or not.

Governmental entities have the power to inspect and require the submission of numerous private business records to ensure the compliance with various laws and regulations. Examples include, records regarding lawful employment status, payroll records for compliance with state and federal wage and hour laws, records regarding employment decisions, and health, safety, and medical records.

Prevailing wage payroll records are good examples of records that governmental

entities are increasingly collecting from government contractors as a matter of course, regardless of whether there is a question concerning compliance.

Private employees and businesses who contract with governmental entities have a reasonable and substantial expectation of privacy that their personal and confidential information in the hands of the government not be generally made available to the public.

This bill places records relating to employees into three categories

1. Employee related records that may be released under the general balancing test without providing a right of notice and judicial review.
2. Employee related records that may be released under the balancing test only after notice of impending release and the right of judicial review have been provided to the records subject.
3. Employee related records that are absolutely closed to public access under the open records law.

SB 78 generally provides for the protection of an employee's home address, e-mail address, home telephone number, and social security number. The bill also specifically provides for protection of the name or other personally identifiable information relating to an employee who is performing work on a project where the employer is required to pay prevailing wages.

Specifically shielding the identities of the private employees is important for a number of reasons. Once you get a person's name in today's world, substantial amounts of information about them are just a mouse click away. That includes

their home address and telephone number, and with that the ability to contact them without consent.

Access to public records cannot be restricted based on the requester's identity or intent. In other words, if one person can get the information, anyone can get the information for whatever purpose - - good or bad.

Because SB 78 provides significant protection of an employee's privacy rights and specific protection for those employees who work on projects covered by the prevailing wage law ABC urges passage.

Thank you for your consideration. I would be glad to take any questions.



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E-mail: league@lwm-info.org
www.lwm-info.org

To: Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections and Privacy
Members of the Senate Committee on Judiciary, Corrections and Privacy

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: April 22, 2002

Re: Support for AB 78, Clarifying when a *Woznicki* Notice is Necessary

The League of Wisconsin Municipalities supports SB 78, the compromise legislation prepared by the Special Committee on Review of the Open Records law. The League supports the bill because it limits the situations in which a records custodian is required to provide a record subject a *Woznicki* notice before releasing the requested record. The bill significantly narrows the *Woznicki* notice requirement to a few situations involving the release of certain employee personnel records.

Municipal officials struggle every day to comply in a timely and cost effective manner with a public records law that has grown more confusing in recent years as a result of court decisions. Local government record custodians need guidance on the issue of when a *Woznicki* notice is mandatory. This compromise bill provides that guidance.

We urge the Committee to recommend passage of AB 78. Thanks for considering our comments.

**Cullen
Weston
Pines
& Bach**

*A Limited Liability
Partnership*

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Jordan Loeb
Tamara B. Packard
Nicholas E. Fairweather
Rebecca A. Schmidt
Kira E. Loehr

Of Counsel:
Cheryl Rosen Weston

**TESTIMONY TO THE SENATE JUDICIARY, CORRECTIONS
AND PRIVACY COMMITTEE ON SENATE BILL 78**

State Capitol, Room 201 Southeast
April 22, 2003

Curt F. Pawlisch, attorney for
Time Warner Telecom of Wisconsin, L.P.
(608) 251-0101

TESTIMONY IN OPPOSITION TO SENATE BILL 78

Today I testify on behalf of Time Warner Telecom of Wisconsin, L.P. ("TWTC"), a competitive local exchange company that provides telecommunications services here in our state. TWTC opposes the legislation before you, but believes its concerns can be remedied by an appropriate amendment.

TWTC operates under the regulatory jurisdiction of the Public Service Commission. The PSC requires competitive local exchange companies such as TWTC to file annual reports with the Commission detailing income, assets, liabilities, capital and data specific to the telecommunications industry. This is obviously competitively sensitive information. While TWTC has always been willing to provide this information to the PSC, it doesn't want to give competitors a road map of its operations. TWTC's policy is therefore to seek confidential treatment of this information.

For such confidential filings, the PSC has established the following procedure. First, the Commission makes a confidential handling determination. This is a preliminary determination as to how the agency will handle a record. If the Commission handles the

record confidentially, the agency will notify a company if any member of the public, including competitors, requests a copy of the filing under the Open Records Law, and the company may comment on whether the record should be disclosed under the Open Records Law. If TWTC disagrees with either a confidential handling decision or a subsequent open records determination, TWTC is free to challenge the Commission in court. In fact, TWTC has twice sued the PSC over confidential handling decisions.

This legislation, however, threatens TWTC's ability to sue the Commission over the agency's confidentiality determinations. Under Wis. Stat. § 196.41, PSC decisions are reviewable under ch. 227 of the statutes. But these statutes do not require the PSC to give notice to a "record subject," nor do the statutes specifically provide that a record subject could obtain judicial review on the Commission's open records decisions.

Fair competition is vitally important to the survival of competitive local exchange carriers in Wisconsin's telecommunications market. TWTC urges the committee to ensure that this bill does not eliminate a company's ability to protect confidential information from getting in the hands of its competitors. We therefore request that the committee amend the bill to include a provision that requires the PSC to give companies like TWTC notice of any open records requests regarding the confidential records of those companies, as well as the opportunity to challenge any PSC decisions concerning confidentiality. We have prepared an amendment which would accomplish this goal.

In closing, let me say that TWTC does not dispute the importance of public disclosure of the workings of government. That policy preference, however, is balanced by this legislature's policy to increase competition in this state as strongly stated in Wis. Stat. § 133.01, "It is the intent of the legislature to make competition the fundamental economic policy of this state"

Amend SB 78 as follows:

Insert after p. 5, line 22 the following:

4. A record filed at the Public Service Commission for which a company has requested confidential treatment.

Hogan, John

From: Burke, Bob [BurkeB@WEAC.org]
Sent: Tuesday, April 22, 2003 1:51 PM
To: john.hogan@legis.state.wi.us
Subject: SB 78 - Special Committee on Review of the Open Records Law

Dear Chairperson Zien;

The Wisconsin Education Association Council would like to be registered in favor, but not speaking, on 2003 Senate Bill 78 as part of the official committee record. This bill received a public hearing by the Senate Judiciary, Corrections and Privacy committee today. WEAC was fortunate to have a representative serve on the Joint Legislative Council Study Committee that produced this bill. Our representative voted to recommend passage of the committee's final report.

This bill is recommended by the Joint Legislative Council's Special Committee on Review of the Open Records Law. The special committee was directed to review the Wisconsin Supreme Court decisions in *Woznicki v. Erickson* and *Milwaukee Teachers' Educational Association v. Milwaukee Board of School Directors* and recommend legislation implementing the procedures anticipated in the opinions, amending the holdings of the opinions, or overturning the opinions. In addition, the special committee was directed to recommend changes in the open records law to accommodate electronic communications and to consider the sufficiency of an open records request and the scope of exemptions to the open records law.

Thank you for scheduling the public hearing and for recording the WEAC position in favor of the bill. Please feel free to contact my office if you have any additional questions regarding WEAC support for this proposal.

Sincerely,

Bob Burke

Bob Burke,
Legislative Program Coordinator
WEAC Center for Public Affairs
(800) 362-8034 ext. 254
Fax: (608) 276-8203
Homepage: www.weac.org

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**2003 Senate Bill 78
Senate Committee on Judiciary, Corrections and Privacy
Senator Dave Zien, Chair
April 22, 2003**

**Testimony of John C. Dowling, Senior University Legal Counsel
University of Wisconsin-Madison**

Senator Zien and members of the committee, thank you for providing me the opportunity to speak on Senate Bill 78, which modifies the Wisconsin public records law. My name is John Dowling. I am Senior University Legal Counsel at UW-Madison. I have served as legal counsel to the university since 1996. One of my duties as legal counsel is to advise the university on public records issues and often to respond to specific requests. These are often very difficult legal issues that demand significant time and energy from me and from many others on the UW-Madison campus.

I am here today to testify in favor of Senate Bill 78. The bill accomplishes two very significant goals and improves the existing law as it has been interpreted by the courts:

1. The bill clarifies what has become known as Woznicki notice. It limits the instances in which such notice must be given to the subject of identified records, yet it recognizes the potential impact on individuals when personal or sensitive information about investigations into possible disciplinary matters may be released. It also spells out a procedure to be followed in giving such notice and in instituting court actions to attempt to restrain access to such records.
2. The bill limits the amount of personal information from public employee personnel records that must be released by state authorities upon request.

These are improvements to the current state of the public records law that should reduce some of the uncertainty and should work to the benefit of UW-Madison and its employees.

I do have the following technical suggestions that, in my opinion, would make the bill even better:

1. Section 19.356(2) requires that notice to the record subject be given by certified mail or personal service. In my experience, that type of formal notice is not

Office of Administrative Legal Services

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necessary on the UW-Madison campus. Electronic mail is extremely efficient and provides the same record of receipt.

2. Section 19.356(3) uses the word "may" in regard to written notification from a record subject that he/she intends to seek a court order. If it is the bill's intent that such written notification is mandatory before the institution of any legal action, the word "must" would seem to be more appropriate.
3. Section 19.36(10)(b) forecloses public access to records relating to current investigations of employee misconduct prior to the disposition of such an investigation. By extension then, it seems that such investigatory records would be available to the public after the disposition of the investigation regardless of its outcome. The results of an investigation that does not lead to any specific disciplinary action can be damaging to the reputation and privacy of a public employee. I would urge the committee to consider amending the language in this section to include records of completed investigations that do not lead to criminal charges or formal disciplinary action.
4. Section 19.36(10)(d) would seem to allow a public employee access to letters of reference that have been submitted about himself/herself. This is contrary to current statutory law (s. 103.13, Wis. Stats.) which specifically excepts letters of reference from personnel records that are available to public employees. UW-Madison relies heavily on letters of reference in the tenure process and in hiring. Individuals around the world write such letters assuming that they will be held confidentially. Allowing access to such letters could stifle the university's ability to obtain honest and forthright letters of reference. I would recommend that the term "letters of reference" be removed from this section of the bill.

It is my hope that this information will be useful to the committee as it considers this legislation. I would be happy to attempt to answer any questions that you may have in regard to this bill and the issue of public records at UW-Madison.

WISCONSIN PROFESSIONAL POLICE ASSOCIATION

MEMORANDUM

TO: Senate Committee of Judiciary, Corrections & Privacy
Senator Dave Zien, Chair

FROM: Gordon E. McQuillen, Director of Legal Services
James L. Palmer, Legislative Lobbyist

DATE: April 22, 2003

RE: **Senate Bill 78**

After carefully reviewing SB 78, the Wisconsin Professional Police Association offers the following amendment. The WPPA believes that this language addresses the concerns of record request subjects whose personal safety might be at risk. In addition, this amendment would safeguard the integrity of ongoing criminal investigations.

19.35 Notice to record subject; right of action. (1) Except as authorized in this section or as otherwise provided by statute, no authority is required to notify a record subject prior to providing a requester with access to a record containing information pertaining to that record subject, and no person is entitled to judicial review of the decision of an authority to provide a requester with access to a record.

(2)(a) Except as provided in pars. (b) and (c) and as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record specified in this paragraph, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on any record subject to whom the record pertains, either

by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights the record subject under subs. (3) and (4). This paragraph applies only to the following records:

* * * *

4. A record shall be closed and shall be redacted from any record made available pursuant to this section or as otherwise provided by statute if it contains information that is reasonably likely to do any of the following:

- a. pose a threat to the personal safety of any victim, witness, undercover law enforcement officer, or other person; or
- b. jeopardize a criminal investigation, including records which would disclose the identity of a source wishing to remain confidential or a suspect not in custody; or
- c. which would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions.

* * * *

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April 2003

To Members of the Legislature

Re: Open Records "Woznicki" fix AB196/SB78

From: Sandra George, Executive Director

A handwritten signature in cursive script, appearing to read 'Sandra George', is written over the typed name.

The Wisconsin Newspaper Association has represented the newspapers of Wisconsin for over 150 years and has always been interested in access to open records. We support these bills to bring some structure to the open records law which was altered by the series of court cases that began with the *Woznicki* case.

That case involved a father trying to get the telephone records of a teacher that was accused of misconduct with his daughter. The DA agreed to release the records, but gave notice to the teacher. The Supreme Court did agree that the records should be released, but the problem resulted from its new expectation that a notice must be given in such cases.

The WNA supports these companion bills because we need an expedited procedure for the court-created requirement that public records custodians give notice before releasing public records that could be embarrassing to those named therein.

These bills represent a compromise which is better than the current situation because it narrows down the types of records subject to a Woznicki notice. For those records that are designated more sensitive and in need of such a notice, it also establishes a specific procedure.

The requirement that a public record custodian perform a balancing test to determine whether it is in the public's interest to have a record released remains and is intended to be unchanged.

- Testify SB > 8 Hogan Notes
1. Curt Pawlish (-)
 2. ~~Gardner~~ ~~to~~ ~~Quillen~~, James Palmer (+)
Steve Orso
 3. Gundrum (+)
-

Prof Potice

"With this story, I think
they oppose the bill"

Gardner: Amendments should be
separate legislation

4. (+) John Kietke (ABC)
5. (+) John Dowling UW-Madison (Legal Ans)
6. (-) Wiswell, Jeff

Personnel Evaluations

Sheriffs will not do evaluations
of ofcs. if they have to Rls. them.

*Sheriff Stammers of Santa Co.
voted against it in Study

p. 10 Line 19 of Bill ... Conte

Sherriffs shall adopt who is
supervisory role and who is
rank and file" ⑤

p. 4 Lines 7-9 Gaudreau Lang.

Was well more in comfort zone
w/ this explanation of the
legislative intent

= DAZ ask by Cnl to do memo
to address our dialogue.